

Section E: Youth Access Restrictions

E1) What key changes are there to youth access to smoking products in New Zealand?

The following changes occurred with the under-18 sale and supply of cigarettes to young people:

- from December 2003 the under-18 ban on the sale of cigarettes and tobacco products extended to toy cigarettes and herbal smoking products – retailers will have a defence if they sighted a photo ID proving the buyer is 18 years or over
- from 10 December 2003, the supply of tobacco or herbal smoking products in a public place, to under 18-year olds was prohibited. There are no exceptions as to who supplies the tobacco or herbal smoking product in a public place, therefore the prohibition covers not only retailers, but also includes friends, parents and relatives
- from December 2004 cigarette vending machines can only be operated by a staff member of the premises, by remote control (serving only people 18 years or over).

E2) Who is affected by the youth access restrictions?

The following people are affected:

- young people under 18
- tobacco sellers to youth – retailers
- vending machine operators – licensed premises.

E3) What may retailers not sell to people under 18?

The sale of cigarettes or other tobacco products to people under 18 is prohibited, including any *herbal* smoking products, even if they do not have tobacco in them, and toy cigarettes.

The ban does not extend to confectionery cigarettes.

E4) Why ban sales of herbal cigarettes to under 18s, when the product doesn't contain tobacco?

A prohibition on the under-18 sale of herbal smoking products is consistent with the current ban on under-18 sale of tobacco smoking products. See F9 for the definition of 'herbal smoking product'.

This does not affect the prohibitions against the use, possession, sale and supply of cannabis or any other herbal smoking product under the Misuse of Drugs Act 1975.

Herbal cigarettes are sometimes promoted as a 'safe' non-addictive alternative to tobacco because they do not contain nicotine. However, herbal cigarettes may contain similar levels to tobacco products of harmful substances such as carbon monoxide and tar, which may contribute to cancers and respiratory diseases.

E5) How do retailers protect themselves against children claiming they are 18 or over?

The Act provides a defence for retailers accused of underage selling if they can prove they saw an 'evidence of age' document indicating that the buyer was 18 years or older. Photo identification is based on the same definition as under the Sale of Liquor Act 1989 (eg, passport, HANZ card, or driver's licence).

It is not a defence to claim that the young person was buying cigarettes on behalf of someone aged 18 or over (eg, "I'm buying them for my mother").

Retailers should ask for photo ID before selling cigarettes and other smoking products to people whose age is not certain.

E6) What can happen to retailers who repeatedly sell smoking products to people under 18?

A person who has been convicted of selling tobacco products to a person under 18 at least twice within a two-year period may find themselves subject to a prohibition order.

The prohibition order prevents a person from selling tobacco products for up to three months.

A prohibition order may be made in addition to any other sentence (ie, a fine) that the court is able to impose. It will be up to the courts to decide whether or not to impose a prohibition order in each case.

A person who fails to comply with a prohibition order may be fined up to \$4000 (individual) or \$10,000 (body corporate).

E7) Can children under 18 be prosecuted for trying to buy cigarettes?

No.

E8) Why should retailers be the only ones who are prosecuted, when adults buy cigarettes to give to young people?

This is no longer the case. The smokefree law bans anyone, including parents, older siblings and friends, from giving cigarettes to a person under 18, in a public place.

The penalty for the supply of a tobacco or herbal smoking product to a person under 18 years in a public place is a fine of up to \$2000.

E9) Are there exceptions to the ban on giving children cigarettes?

There is no exception for who gives a young person cigarettes in a public place. The prohibition includes friends, parents, and relatives. There is a fine of up to \$2000 for doing so.

The offence is limited to people who supply children with cigarettes in a 'public' place, such as on the street, outside a dairy, in a park etc.

The Ministry of Health are not empowered to enforce this ban in people's private homes. However, the ban will encourage adults and parents to encourage a smoke-free (auahi kore) lifestyle and be positive role models for young people.

E10) What changes are there for cigarette vending machines?

Vending machines are generally placed in licensed premises that sell liquor, so minors cannot access them. However, surveys and evidence indicate that under 18-year-olds are still able to access cigarettes from vending machines.

Access to vending machines is now restricted to staff on the premises. Member of the public (18 years and over) may buy cigarettes from the vending machine by asking an employee, who may use a remote controlled device.

Vending machines must also comply with any requirements for health messages to be displayed, even though the public may not have visual access to the machine.

E11) What else can retailers of smoking products be liable for?

There are further restrictions that apply to all retailers of tobacco products. These include:

- the display of tobacco products at each 'point of sale' is limited to 100 packages and 40 cartons, unless the retailer's place of business is a 'tobacconist's shop'. A 'point of sale' means:
 - a checkout where tobacco products may be bought, and
 - includes a till or cashbox, whether part of a checkout or not.
- no tobacco product that is sold inside the premises being visible from the outside
- not more than two tobacco packages and two tobacco cartons of the same kind being exposed for sale at any point of sale

- limitations on the size of tobacco packages and cartons
- all tobacco products are to be further than 1 metre away from children's products (including toys and confectionery) unless, because of the size of the premises, it is not reasonably practicable to do so
- no tobacco product being exposed for sale on any counter top or similar surface
- the display of a "Smoking Kills" sign at each point of sale where tobacco products are exposed for sale
- tobacco products cannot be packaged or sold with other products such as lighters, CDs and other items, at a single price. This is because of a concern that co-packaging of tobacco products with other products may induce young people to take up smoking.
- Click here for further information on [tobacco displays](#) and the [regulation of smoking products](#).

Section F: Regulation of Smoking Products/Better Consumer Information

F1) What key changes are there to the regulation of smoking products/better consumer information in New Zealand?

The following changes occurred with the regulation of smoking products in New Zealand:

- from December 2004 new restrictions applied to the retail display of tobacco products:
 - limiting numbers of packages and cartons displayed
 - banning counter-top displays
 - banning co-packaging, and limiting display near products marketed at children
 - requiring a 'Smoking Kills' sign to be displayed at each point of sale
 - some relaxation of display restrictions for specialist tobacconist shops.
- future regulations may require cigarette packages to:
 - have pictorial health warnings to improve consumer awareness (eg, graphic pictures of smoking-affected teeth or lungs)
 - list and quantify the harmful ingredients
 - include a leaflet about the health effects of smoking (eg, to clarify that 'light' or 'mild' brands do not reduce the level of risk to your health).
- future regulations may require tobacco manufacturers and importers to provide more detailed breakdowns of product ingredient test results in annual returns to the Ministry of Health, and may require the tobacco industry to meet future prescribed limits on harmful ingredients in smoking products.

F2) Who/what places are affected by the regulation of smoking products?

The following people or places are affected by the smokefree law's regulation of smoking products:

- tobacco sellers (eg, supermarkets, dairies, service stations)
- specialist tobacconists
- licensed premises with cigarette vending machines
- tobacco manufacturers and importers.

F3) How many cigarette packages can retailers display, and how are they counted?

Retailers other than specialist tobacconists can display up to 100 packages (including pouches of loose tobacco, and individual cigars) and 40 cartons (including cigar boxes) at each 'point of sale'.

The 100 count is for each 'package', not each 'facing'. But up to four 'backstack' packages stored behind a front package in angled stacks are not counted (unless more than their top facing is exposed).

Packages and cartons over the 100 limit can be stored behind screening or behind a counter, but must not be visible to the public.

Packages and cartons that exceed status quo dimensions ('supersizes') cannot be displayed.

Within the 40/100 limits, no more than two per brand (the same package or carton) can be displayed, to prevent 'block' displays.

F4) What does a ban on ‘co-packaging’ mean?

The smokefree law bans the packaging or selling of tobacco products together with other products such as lighters, bottle openers, CD radios and other gimmicks, as one item at one price. This is because of a concern that co-packaging of tobacco with other products may encourage young people to buy the products and take up smoking.

F5) How do the display restrictions apply to a specialist tobacconist?

The smokefree law defines a ‘tobacconist’s shop’ as a retailer that:

- is held out as a specialist retail seller of tobacco products (even if it is also held out as a specialist retail seller of other products such as newspapers and magazines, or it also provides services such as hairdressing, or both)
- obtains at least 60 percent of the gross revenue from its retail sale of tobacco products.

A specialist tobacconist’s shop does not include any retail shop on a premises which sells petrol to motorists.

The display restrictions for 100 tobacco packages and 40 cartons at a point of sale do not apply to retailers that fall into the category of a specialist tobacconist.

Other retail display restrictions applying to specialist tobacconists, include:

- no counter-top display
- no co-packaging
- limit of two packages ‘of the same kind’
- no tobacco display within one metre of children’s products
- display of a prominent ‘Smoking Kills’ sign.

F6) What does ‘future regulations’ mean, and when do they come into effect?

The smokefree law empowers the Government to draft secondary legislation, which are generally more detailed than legislation, and enhance the provisions of the main Act. Regulations are made by Order-in-Council, not Parliament.

Current regulations in this area are called Smoke-free Environments Regulations 1999. They provide detailed provisions about health messages and other messages on tobacco packages, price lists and testing by tobacco manufacturers.

Any future regulations are not likely to come into effect for at least a year, following a public consultation process.

F7) What are future regulations under these changes likely to cover?

The Health Select Committee recommended that the following requirements for all smoking products sold in New Zealand are given effect through future changes to smoke-free regulations:

- pictorial health warnings on products
- leaflets in products that cover not only health effects, but also provide information about the harmful constituents (including additives), and their respective quantities, in smoking products and their smoke
- annual testing of harmful constituents with a breakdown by each product brand and quantities of each constituent
- further testing, if the Director-General of Health asks for it
- more information in annual returns and reports, detailing the type and quantity of constituent in each brand of tobacco product (for publication on the Ministry of Health’s website or similar).

F8) How may these future regulations affect consumers (current or potential smokers)?

The Health Select Committee recommended that future regulations may include provisions to ensure that consumers receive accurate information about the substances they are consuming, and the likely impact of those substances on their health.

F9) Could there be future regulations to further restrict tobacco display restrictions?

Yes, possibly. An amendment to the smoke-free law was passed providing for a future regulation making power, if the tobacco industry fails to comply with the intention of the tobacco display restrictions.

It was part of an amendment that was requested by the tobacco industry, and balances some provisions that clarify the intention of the restricted product display provisions, to avoid future circumvention by the tobacco industry.

F10) What does 'herbal smoking product' mean?

A herbal smoking product is a product that:

- is or contains vegetable matter
- is intended to be smoked, but
- contains no tobacco.

This does not affect therapeutic products under the Medicines Act 1981, such as quitting aids.

This does not affect the prohibitions against the use of cannabis or any other herbal smoking product that is listed in a schedule to the Misuse of Drugs Act 1975.

F11) What provisions are there for herbal smoking products?

The Health Select Committee recommended widening the definition of 'to smoke' to ensure non-tobacco products such as herbal smoking products were covered for consistency.

From December 2003 the ban on under-18 sale of cigarettes and other tobacco products extended to include any herbal smoking products. Herbal product retailers need a sign informing the public that under-18 sale of herbal smoking product is banned.

From December 2004:

- herbal smoking products had to comply with labelling and health messages requirements, including requirements in future regulations
- herbal smoking products had to comply with annual testing of harmful constituents requirements, including requirements in future regulations
- cigarette vending machines with herbal smoking products had to comply with vending machine requirements to display health messages or labels.